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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,318	03/01/2002	Gary J. Hydock	17851.0 (Hydock)	2105
1342	7590	06/17/2004	EXAMINER	
PHILLIPS LYTLE LLP INTELLECTUAL PROPERTY GROUP 3400 HSBC CENTER BUFFALO, NY 14203-3509			BAXTER, GWENDOLYN WRENN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/087,318

Applicant(s)

HYDOCK, GARY J.

Examiner

Gwendolyn Baxter

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-6, 8, 10, 12, 17-19, 24-26 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-6, 8 and 10 is/are allowed.
- 6) ☒ Claim(s) 12, 17-19, 24-26 and 34-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

This is the third office action for application serial number 10/087,318, Modular Radiant Heat Panel System, filed on March 1, 2002.

***Withdrawal of Finality***

Upon review of the prior art of record and upon discovery of additional art the finality of the last office action has been withdrawn. The amendment after final submitted March 16, 2004 has been entered and the following action has been taken. Any inconvenience is regretted.

***Claim Rejections - 35 USC § 112***

Claims 17, 18 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17, 18, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the attachment spacer relative to the tray or other components of the tray has not been set forth.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 17, 19, 25, 26, 34, 40 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,212,348 to Kobayashi. The present invention reads on Kobayashi as follows: Kobayashi teaches a heat transfer panel comprising of a formed tray. The tray (60, 61) has a containment space (shown containing element 40) and a conduit channel (70). The space contains a thermal mass (40). The thermal mass has an outer finished flooring surface or under layer (50). The channel, containment space and thermal mass are configured and arranged to permit heat transfer between the channel and the thermal mass. Kobayashi teaches a multiple radiant transfer panel such that the panels are positioned adjacent each and the conduits extend through a series of conduit channels (column 2, lines 9+). The attachment spacer or putty is defined at lines 11+ of column 2. An edge spacer is positioned between the inner perimeter of wall (61) and the outer perimeter of (61). The conduit communicates with an apparatus for heating a fluid flowing through the conduit. Element 50 is the under layer.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 18, 35-38 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi. Kobayashi discloses the claimed invention except for the attachment spacer being wood. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the attachment spacer wood, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claims 35-36, Kobayashi teaches the steps set forth in the aforementioned claims, however fail to teach the step of attaching the attachment spacer to the under layer. This step is not required since the foam inherently sticks to the under layer eliminating the need for an additional part to perform the attaching step. Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the attachment spacer or attaching means separate from that of the foam, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

#### ***Allowable Subject Matter***

Claims 4-6, 8 and 10 are allowed.

The following is statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the following: a fixture tower and side gusset.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 12, 17-19, 24-26, and 34-44 have been considered but are moot in view of the new grounds of rejection.

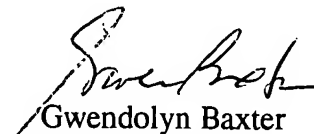
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP2002-148913 teaches a fixture tower.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

June 7, 2004